

TOWN OF DAVIE TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM/PHONE: Patrick Lynn, Police Chief/ (954)693-8320

PREPARED BY: Thomas Moss, Esq., Assistant Town Attorney/Daniel J. Stallone, Esq., Code Compliance Official/Police Administration/af

SUBJECT: Ordinance

AFFECTED DISTRICT: All

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: CODE AMENDMENT - AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA AMENDING CHAPTER 24 OF THE CODE OF THE TOWN OF DAVIE ENTITLED "OPERATION OF VEHICLE" BY CREATING TWO DIVISIONS IN ARTICLE II, ENTITLED "DIVISION I. GENERALLY" AND "DIVISION II. THE SAFE INTERSECTIONS CODE" OF THE TOWN OF DAVIE. (tabled from May 5, 2010)

EXECUTIVE SUMMARY: The Police Department seeks to amend Chapter 24 of the Code of the Town of Davie entitled "Operation of Vehicle" by adding two new Divisions, entitled "Division I. Generally" and "Division II. The Safe Intersection Code" of the Town of Davie." This new code section establishes the authority for the Police Department to use unmanned camera/monitoring systems in the Town of Davie. It promotes compliance with red light signal directives and provides for the adoption of a civil enforcement system for the enforcement of light signal violations. It also provides a supplemental means for Davie Police Officers to monitor compliance with laws related to traffic control signals through the issuance of a "Notice of Violation" which includes specific provisions and content. It affixes responsibilities and duties to a Traffic Control Violation Officer for the enforcement of the Notice of Violation against vehicle owners, and provides for the right of such vehicle owners to appeal their case before a Code Enforcement Special Magistrate.

KEY POINTS:

- Tabled from May 5, 2010

CONCURRENCES:

FISCAL IMPACT: not applicable

Has request been budgeted? n/a

If yes, expected cost: \$

Account name and number:

If no, amount needed: \$

What account name and number will funds be appropriated from:

Additional Comments:

RECOMMENDATION(S): Motion to approve ordinance

Attachment(s):

ORDINANCE _____

A ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, AMENDING CHAPTER 24 OF THE CODE OF THE TOWN OF DAVIE ENTITLED “OPERATION OF VEHICLE” BY CREATING TWO DIVISIONS IN ARTICLE II, ENTITLED “DIVISION I. GENERALLY” AND “DIVISION II. THE SAFE INTERSECTIONS CODE” OF THE TOWN OF DAVIE.

WHEREAS, the Town Council of the Town of Davie recognizes that the existing Town code does not contain a code section that authorizes the Town’s Police Department to use unmanned cameras/monitoring systems to promote compliance with red light signal directives and that the lack of such a code has curtailed the enforcement of red light signal offenses; and

WHEREAS, the use of unmanned cameras/monitoring systems shall further the goals, objectives, and policies of the Town Council and the Davie Police Department with regards to the assurance of the overall improvement of those adverse traffic conditions that affect the health, safety, and welfare of the citizens, residents and business community while traveling within the boundaries of the municipal limits of the Town of Davie; and

WHEREAS, the “Safe Intersections Code” has been designed to enforce traffic signal device violations against vehicle owners by providing a supplemental means to Police Officers to protect and improve the public health, safety and welfare of the citizens, residents and business community by acting as a deterrent to traffic control signal violations that may thereby reduce accidents and injuries associated with such violations; and

WHEREAS, the “Safe Intersections Code” provides for a six month introductory period to allow the citizens and visitors to the Town of Davie to grow accustomed to the enforcement provisions contained herein, while also providing an appeal process in its enforcement for a vehicle owner to be heard before a Code Enforcement Special Magistrate; and

WHEREAS, the Town Council concludes that it is in the best interest of the citizens, residents, and business operators of the Town to provide our Police Officers with this new code so as to provide a supplemental means to enforce traffic control signal violations that cannot be addressed through the existing Town code.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. AUTHORITY. The Town of Davie has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida.

SECTION 2. ADOPTION. Division I and II of Article II of Chapter 24 of the Code of Ordinances are hereby adopted as follows:

CHAPTER 24.

ARTICLE II. OPERATION OF VEHICLE.

DIVISION I. GENERALLY
(Includes code sections 24-23. – 24-28.).

DIVISION II. SAFE INTERSECTIONS CODE

Sec. 24-29. Intent.

The purpose of this division is to authorize the use of an unmanned camera/monitoring system to promote compliance with red light signal directives as proscribed by this code, and to adopt a civil enforcement system for light signal violations. This division will also supplement law enforcement personnel in the enforcement of red light signal violations

and shall not prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with normal statutory traffic enforcement techniques.

Sec. 24-30. Use of Image Capture Technologies

The town shall utilize image capture technologies as a supplemental means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state laws related to red light signal violations or conflict with such laws. The town shall utilize image capture technologies as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. Notices of Violation issued pursuant to this chapter shall be addressed using the Town's Code Enforcement Special Magistrates and not uniform traffic citations or county courts.

Sec. 24-30.1. Definitions

The following definitions shall apply to this division:

Intersection means the area embraced within the prolongation or connection of the lateral curb line; or, if none, then the lateral boundary lines, of the roadways of two roads which join or intersect one another at, or approximately at, right angles; or the area within which vehicles traveling upon different roads joining at any other angle may come in conflict.

Motor vehicle means any self-propelled vehicle not operated upon rails or guide way, but not including any bicycle, motorized scooter, electric personal assisted mobility device, or moped.

Notice of Violation means a citation issued for a red zone infraction.

Owner/Vehicle owner means the person or entity identified by the Florida Department of Motor Vehicles, or other state vehicle registration office, as the registered owner of a vehicle. Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.

Recorded Images means images recorded by a traffic control signal monitoring system/device:

- (1) On:
 - (a) Two or more photographs;
 - (b) Two or more electronic images;
 - (c) Two or more digital images;
 - (d) Digital or video movies; or
 - (e) Any other medium that can display a violation; and
- (2) Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.

Red Zone Violation means a traffic offense whereby a traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected

traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.

Special Magistrate means the Town's Code Enforcement Special Magistrate.

Traffic Control Signal means a device exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, using only the colors green, yellow, and red which indicate and apply to drivers of motor vehicles as provided in F.S. § 316.075.

Traffic Control Signal Monitoring System/Device means an electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.

Sec. 24-30.2. Adherence to Red Light Traffic Control Signals

Motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is stopped at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

Sec. 24-30.3. Violation

A violation of this Article, known as a "red zone violation," shall occur when a vehicle does not comply with the requirements of Section 24-30.2. Violations shall be enforced pursuant to Section 24-30.

Sec. 24-30.4. Six-Month Notice; Introductory Period

For the first six months of this chapter, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction in accordance with normal traffic enforcement techniques, the vehicle owner shall receive a courtesy notice of the violation. Commencing six months after the effective date of this Article, the vehicle owner is subject to the enforcement provision as provided herein.

Sec. 24-30.5. Review of Recorded Images

(a) The owner of the vehicle which is observed by recorded images committing a red zone violation shall be issued a notice of violation. The recorded image shall be sufficient grounds to issue a notice of violation.

(b) The Town shall designate a Traffic Control Violation Review Officer, who shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The Traffic Control Violation Review Officer shall review recorded images prior to the issuance of a notice of violation to ensure accuracy and the integrity of the recorded images. The Traffic Control Violation Officer shall also verify that the traffic control monitoring system/devices which captured the recorded images was functioning properly at the time the recorded images were captured. Once the Traffic Control Violation Review Officer has verified the accuracy of the recorded images and functionality of the traffic control monitoring system/devices, he or she shall complete a report, and a notice of violation shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles.

Sec. 24-31. Notice of Violation

The notice of violation shall include:

- (a) The name and address of the vehicle owner;
- (b) The license plate number and registration number of the vehicle;
- (c) The make, model, and year of the vehicle;
- (d) Notice that the violation charged is pursuant to this chapter;
- (e) The location of the intersection where the violation occurred;
- (f) The date and time of the red zone infraction;
- (g) Notice that the recorded images relating to the vehicle and a statement that the recorded images are evidence of a red zone violation;
- (h) The civil penalty imposed;
- (i) Images depicting violation;
- (j) The procedures for payment of the civil penalty and contesting the notice of violation;
- (k) A signed statement by the Traffic Control Violation Officer that, based on inspection of recorded images, the vehicle was involved in a red zone violation;
- (l) Information advising the person alleged to be liable under this section, the manner and time in which liability as alleged in the notice of violation may be appealed and warning that failure to pay the civil penalty or to contest liability in a timely manner is an admission of liability.

Sec. 24-31.1. Vehicle Owner Responsibilities

- (a) A vehicle owner receiving a notice of violation may, within 21 days of the date of the notice of violation:
 - (1) Pay the assessed civil penalty pursuant to instructions on the notice of violation; or
 - (2) Request an appeal pursuant with procedures as outlined in this division.
- (b) The failure to comply with the provisions of this section within 21 days from the date of the notice of violation shall constitute a waiver of the right to contest the notice of violation and will be considered an admission of guilt.

Sec. 24-32. Appeal to Special Magistrate

The Town's Code Enforcement Special Magistrates are authorized to consider appeals under this chapter. Within 21 days of the date of the notice of violation, the vehicle owner may file an appeal with the Town pursuant to the directions in the notice of violation. A hearing on the appeal shall be scheduled for all appeals except those in which the vehicle owner submits an affidavit pursuant to Section 24-32.1 in which the vehicle owner affirms under penalty of perjury that the vehicle was not under his or her care, custody or control, or that of someone with vehicle owner's consent.

(a) Upon receipt of the appeal, the Town shall schedule a hearing before the Special Magistrate to occur not later than 60 days after the Town's receipt of the appeal. Notice of hearing shall be provided to the vehicle owner no less than 10 days prior to the hearing, and shall be provided by certified mail and U.S. Regular Mail to the same address to which the notice of violation was sent; such mail service shall be considered achieved after five (5) days elapsed from the mailing date.

- (b) The following shall be permissible grounds for an appeal:
 - (1) At the time of the violation, the vehicle was not under the care, custody, or control of the vehicle owner or an individual with vehicle owner's consent, established pursuant to affidavit as provided in Section 24-32.1;
 - (2) The motor vehicle driver was issued a citation by a law enforcement officer, which was separate and distinct from the citation issued under this section, for violating the steady red traffic control signal;
 - (3) The motor vehicle driver was required to violate the steady red traffic control signal in order to comply with other governing laws;
 - (4) The motor vehicle driver was required to violate the steady red traffic control signal in order to reasonably protect the property or person of another;
 - (5) The steady red traffic control signal was inoperable or malfunctioning; or
 - (6) Any other reason the Special Magistrate deems appropriate.

(c) The Traffic Control Violation Review Officer shall testify at the appeal on behalf of the Town. The vehicle owner may be represented by an attorney who shall provide a notice of appearance to the Town no less than five (5) days prior to the hearing date; the vehicle owner may also present testimony and evidence on their own behalf.

(d) Recorded images indicating a red zone violation, verified by the Traffic Control Violation Review Officer, are admissible in any proceeding before the Town's Code Enforcement Special Magistrate to enforce the provisions of this chapter, and shall constitute prima facie evidence of the violation.

(e) Unless an affidavit is provided pursuant to Section 24-32.1., it is presumed the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of a red zone violation.

Sec. 24-32.1. Vehicle Owner Affidavit of Non-Responsibility

(a) In order for the vehicle owner to establish that the motor vehicle was at the time of the red zone infraction, in the care, custody, or control of another person without the consent of the registered owner, the vehicle owner is required, within 21 days from the date listed on the notice of infraction, to furnish to the Traffic Control Violation Officer, an affidavit setting forth the circumstances demonstrating that the motor vehicle was not in the vehicle owner's care, custody, or control, or that of a person with vehicle owner's consent. The affidavit must be executed in the presence of a notary, and include:

- (1) If known to the vehicle owner, the name, address, and the driver's license number of the person who leased, rented or otherwise had care, custody, or control of the motor vehicle at the time of the alleged red zone infraction; or
- (2) If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged red zone infraction.
- (3) The following language immediately above the signature line:
"Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."

(b) Upon receipt of an affidavit pursuant to this section, any prosecution of the Notice of Violation issued to the vehicle owner shall be terminated.

Sec. 24-33. Administrative Charges

In addition to the assessment pursuant to Section 24-33.1 herein, administrative charges equal to fifty dollars (\$50) may be assessed against a violator in the event of an appeal that results in a finding of guilt by the Special Magistrate; if the Town finds it necessary to institute collection procedures then the violator shall be subject to an

administrative fee equal to fifty dollars (\$50) and the actual costs incurred including any attorney or other applicable fees.

Sec. 24-33.1. Collection of Fines

The Town may use the existing code enforcement system procedures found in chapter 6 of the Town code for the collection of any penalty imposed herein, including the recordation of fines and administrative fees in the Broward County public records; further, the Town may enforce such penalties by appropriate civil action in the nature of debt collection as permitted under the laws of Florida.

Sec. 24-33.2. Exceptions

This Article shall not apply to red zone violations involving vehicle collisions or to any authorized emergency vehicle responding to a bona fide emergency; nor shall a notice of violation be issued in any case where the operator of the vehicle was issued a citation for violating the state statute regarding the failure to stop at a red light indication.

Sec. 24-33.3. Penalty

A violation of this chapter shall be deemed a non-criminal, non-moving violation for which a civil penalty in the amount of one hundred twenty five dollars (\$125) shall be assessed. As the violation relates to this chapter and not the state statutes, no points as provided in F.S. § 322.27, shall be recorded on the driving record of the vehicle owner or responsible party.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS ____ DAY OF _____, 2010

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS ____ DAY OF _____, 2010